

U.S. Customs and Border Protection Office of Strategic Trade Regulatory Audit Division

Resolving “Gray Areas” of Harmonized Tariff Schedule (HTS) Classification

Introduction

In March 2003, the U.S. Customs Service became part of the U.S. Customs and Border Protection, which will continue to be referenced as Customs in this document.

During the course of testing a company's import transactions in a Focused Assessment (FA), technical issues regarding the correctness of certain “gray areas” of Harmonized Tariff Schedule (HTS) classification sometimes arise. Customs has developed a resolution process where the FA import specialist (FA IS) may make a determination that the tariff classification of a particular product is a “gray area” and is not to be counted as an error in Customs risk opinion for a company. The resolution process also provides for the auditee to request a review of a particular classification determined by the FA IS to the appropriate national import specialist (NIS).

Correct classification of imports has always been difficult. The increase in tariff rate lines, the explosion of imports, and the variety of new products being imported complicates the classification of merchandise. Customs must identify the risk associated with importer errors when evaluating importer noncompliance. Customs, as well as the importer, is negatively affected when costs to achieve compliance are out of proportion to the risks associated with noncompliance.

As part of an FA, the FA team, including the import specialist, reviews the company's internal controls relating to the classification of imported merchandise, which may include a review of a sample of classifications imported by the auditee. In some cases the classification used by the importer is a plausible alternative to the Customs classification determined to be correct by the FA IS.

Procedures for Resolution of “Gray Area” Classifications

The following procedures cover “gray area” classifications and collection of unpaid duties in such cases, and provide for a referral for review to the NIS concerning the correct HTS classification.

When reviewing classifications that fall into a “gray area,” the FA IS should consider whether:

- Customs considers the classifications ambiguous and subject to varying interpretations, including the interpretation by the auditee.
- The auditee has a trained and knowledgeable staff that used a documented, reliable, and systematic approach to arrive at the entered HTS classification. Attributes of a reliable system are suggested by the questions in the “Reasonable Care Checklist” contained in Customs Informed Compliance Publication on Reasonable Care.

If the FA IS applies the criteria discussed above and concludes that the interpretation by the company is a “gray area,” the importer's internal controls will be considered sufficient to provide

reasonable assurance that the appropriate classification is used, and the classification will not be counted as an error for the risk opinion. The correct classification, however, should be conveyed to the company to ensure that the appropriate classification is used in the future.

Referral Procedures for Resolving Classification Differences

If the auditee disagrees with the FA IS on the correctness of a classification, the auditee or the FA team may refer the issue to the NIS for a final determination on the correct classification. The auditee must request the FA IS to refer the issue to the NIS within 30 days of being advised by the FA IS of the classification difference(s). To request a decision from the NIS for either the auditee or FA team, the FA IS, in cooperation with the FA team leader, will submit documentation of Customs review along with company information. The NIS will review all the information provided and, usually in 30 days, provide a decision on the correct classification.

Revenue Owed as a Result of “Gray Area” Determinations

If the FA IS or NIS determines that an entered classification is a “gray area” and use of the correct classification would have resulted in additional revenue owed to Customs, the revenue should be collected only if the relevant entries are unliquidated.